Failing that, the motion may be set down for further consideration in chambers, or for settlement of the formal rule or order, and I will hear argument as to costs.

I desire to add a general observation. Administrative officers not infrequently take the view that when they are not actually a Court they can wholly ignore the Evidence Ordinance. This is a very grave mistake. It is true that they are not strictly bound so that they may, for instance, properly dispense with such matters as formal proof of documents but they must apply the rules against hearsay. The main provisions of the Ordinance are neither arbitrary nor technical. They have been built up through centuries of practical experience and are not obstacles to be evaded but instruments to be used in the scientific ascertainment of truth.

In the course of this case hints were dropped as to possible reasons for the cancellation of a licence. Of all the many reasons why a licence might be cancelled there is one which is, at the present time, more probable than all the others. We have ample judicial knowledge that rubber stealing is rife, especially in the form of illegal tapping, and that the proceeds form one of the principal sources of supply for the almost endemic banditti. If there were no receivers there would be few thieves and it is obvious that many licensed rubber dealers in different parts of the country are in fact engaging in this illegal and subversive traffic. Despite his long umblemished record the applicant may have been induced by greed, or fear, or both, to take part in this traffic and the Board may have some reason to think that he has done so. Manifestly they do not know that he has or they would prosecute him. They may have grounds falling short of legal proof or they may only have suspicion. But there is a very important consideration which might not immediately occur to a layman. There are circumstances, as for instance where the information comes from a tainted source, where the fact that a charge is made against a man may be a reason for thinking that he is innocent.

Banditti commonly use direct methods. They say: — "Participate or....." meaning, participate or be shot. But it is not impossible that a person who had become a bandit agent because he had been terrorised, might hesitate to use violence himself and prefer an indirect method. He might frame a case against a rubber dealer because he had refused to buy stolen rubber. The Board should at least bear this possibility in mind.

Order accordingly.

Ex parte PUBLIC TRUSTEE, FEDERATION OF MALAYA.

[Orig. Civ. Juris. (Taylor, J.) September 13, 1950]

[K. L. — Originating Summons No. 116 of 1950]

Public Trustee Enactment (Cap. 62), s. 6(1).

The Public Trustee Enactment does not authorise the Public Trustee to administer estates of small value without a grant of representation having been extracted.

APPLICATION by the Public Trustee for an appointment of a guardian.

The Public Trustee (M. Neal) in person.

Taylor, J.: — This is an application by the Public Trustee for the appointment of a guardian of the property of one Irene Fitzpatrick, an infant. The summons was adjourned for argument as to whether the Public Trustee has a *locus standi* to make the application.

The father of the infant died intestate; the Public Trustee is administering the estate but without any grant of representation; the question to be decided is whether he is legally empowered to act in the matter. According to the affidavit of Kehar Singh, the Assistant Public Trustee, the solicitors for the widow asked the Public Trustee to make an application for letters of administration. Mr. Neal, the learned Public Trustee who appeared in person to argue the summons, said that this statement was "probably inaccurate." However that may be, what was done is clear. No petition for letters of administration was ever filed. The Public Trustee (not Mr. Neal but his predecessor) "being satisfied that the case came under section 6 of the Public Trustee Enactment" made a declaration that he undertook to administer the estate under that section and the department have in fact administered it and paid out the widow's share; it remains only to deal with the shares of two infant daughters. Section 6 (i) reads: —

"6. (i) Any person who in the opinion of the Public Trustee would be entitled to apply to the Court for an order for the administration by the Court of an estate, the gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than five thousand dollars, may apply to the Public Trustee to administer the estate, and where any such application is made and it appears to the Public Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so."

The Public Trustee contends that this provision entitles him to general administration without any reference to the Court of any estate under $5,000, of which the beneficiaries are persons of small means, at the request of a person entitled to petition for letters of administration. He conceded that those "small

estates" which include land and are distributable by Collectors under Chapter XIX of the Probate and Administration Enactment may be excepted.

His argument involves the proposition that the words ".... for the administration by the Court of an estate..." are equivalent to ".... for a grant of letters of administration of the estate." He attempted to support this construction by saying that the words of the statute as they stand are ungrammatical; that the words "by the Court" are an adverbial phrase qualifying the words "order for the administration of the estate" and that these words cannot refer to the word "administration" which is part of an adjectival phrase. He also referred to section 4 (i) (a) and (c) but these do not carry the matter any further because both are "subject to the other provisions of the Enactment."

In my opinion section 6 (i) is perfectly clear. If the legislature had meant "any person entitled to apply for letters of administration" they could, and obviously would, have said so. If they had meant an official to administer without a grant they could, and would, have said so plainly, as in section 46 of the Police Force Enactment. The phrase "administration by the Court" is a familiar one and refers to an administration action which arises only after a grant of representation has been issued. That is emphasised by rule 11 (2) which expressly requires the Public Trustee, when acting under section 6 (i), to call in the pre-existing grant.

Mr. Neal said that the course followed in this case was traditional in his office. This is perfectly true. It already existed in 1935 when the then Public Trustee of the Federated Malay States told me that, as he put it, "he could give letters of administration to himself." I have little doubt that the practice originated with one of the early Public Trustees, most of whom were laymen. The expression "administration by the Court" meant nothing to him, familiar though it is to lawyers, and he simply assumed or pretended that it was equivalent to "grant of letters of administration" because that interpretation enabled him to save the small amount of time and work involved in lodging an ordinary petition. If he had had any relevant experience he would have known that on a long view that interpretation would involve his department in serious difficulties. For one thing it wholly evades the liability for estate duty but I imagine that some departmental arrangement was made under which the duty is in fact collected though there is no legal machinery for it. The greatest danger is that money may be paid to someone who is not entitled to it and it is odd that this malpractice has persisted for so long without a fraud coming to light.

In the days when there was no separate Public Trustee for the Colony, this heretical practice was followed in Singapore in about a dozen cases and at least one of them led to serious difficulty and some unnecessary expense, although no part of the corpus was lost. I do not think that section 6 (i) has ever been construed by the Court but in 1939 the Law Officers of the Colony took the view which I have expressed and on several occasions lawyers in private practice advised in the same sense.

The Public Trustee has no power to administer without a grant. In this case he is an administrator *de son tort* and has no *locus standi* to apply to the Court. Mr. Neal pointed out, quite correctly, that the application is, in several other respects, misconceived so there is no question of adjournment or rectification. The summons is dismissed with costs. The Court cannot allow the costs of such proceedings to be taken out of the estate.

Summons dismissed.

In re MARK JOHNSON, DECEASED.

[Orig. Civ. Juris. (Taylor, J.) September 11, 1950]

[K. L. — Petition for Letters of Administration No. 167 of 1950]

Public Trustee — Whether authorised to petition for letters of administration.

This was a petition by the Public Trustee for letters of administration of the estate of one Mark Johnson, who died at Seremban leaving a bank account and other assets. He was, apparently, unmarried but is survived by his parents who reside in England and it is alleged that the father of the deceased has, by a letter, requested the Public Trustee to administer the estate. The Registrar doubted whether the Public Trustee had any right to be the petitioner in such a case and referred the matter to a Judge for this point to be argued.

Held, that the Public Trustee is not authorised by statute to petition for letters of administration.

PETITION for letters of administration.

The Public Trustee (M. Neal) in person.

Taylor, J. : — This was a petition by the Public Trustee for letters of administration of the estate of one Mark Johnson, who died at Seremban leaving a bank account and other assests. He was, apparently, unmarried but is survived by his parents who reside in England and it is alleged that the father of the deceased has, by a letter, requested the Public Trustee to administer the estate. The Registrar doubted whether the Public Trustee had any right to be the petitioner in such a case and referred the matter to a Judge for this point to be argued.